THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11594 of 2005

Dated:13.09.2006

Between
K.Narendra Babu

…..Petitioner

and

1.The District Collector, West
Godavari, Eluru and others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11594 of 2005

ORDER:

This writ petition is filed seeking a Writ of Certiorari to call for the records relating to the order passed in C.M.A.No.45 of 2002 on the file of the District Judge, West Godavari, Eluru and set aside the same, as arbitrary, illegal and violative of the provisions of the A.P. Rice Procurement (Levy) Order, 1984 and also the provisions of the A.P. Scheduled Commodities Dealers (L & D) Order, 1982.

It appears that the petitioner is a rice miller and doing business under the name and style of M/s.Sri Jaya Lakshmi Traders, in purchase and sale of rice, paddy and broken rice, as a proprietary concern. The petitioner obtained requisite permission and licence to run the rice mill from the authorities concerned including Form 'B' licence under A.P. Schedule Commodities Dealers (L & D) Order, 1982. As per the said licence, he is entitled to purchase, sell or store for sale of paddy, rice, broken rice, brawn and its products pulses, grains, wheat, edible oil as a retailer or a wholesaler or both. Government issued G.O.Ms.No.60, dated 27.7.2000 where under the restriction on movement of paddy and rice within and out side the State has been lifted. In view of the same, the petitioner is entitled to

purchase rice from wholesale dealers under due bills after obtaining permission from the respondents. The respondents have never raised any objection for purchase and sale of rice by the wholesale trading mills from another wholesale rice dealers which is in vogue since long time.

As the matter stood thus, the Assistant Grain Purchasing Officer, Eluru-3rd respondent along with his staff inspected the rice mill on 29.1.2001 and seized (1) Paddy 1630.23 quintals (2) Rice 655.86 quintals (3) Broken rice 240.80 quintals, from the mill on the ground that the purchase of rice from the wholesale dealer is violative of the licensing conditions and A.P.Rice Procurement (Levy) Order, 1984. Total worth of the seized stocks by the respondents is Rs.15,53,470/-. According to the petitioner, the act of the seizure conducted by the respondents is not only highhanded but also erroneous. The said action was challenged by filing writ petition No.25110 of 2001 and batch by the petitioner and other rice millers. The said writ petitions were disposed of with a direction to the petitioner and other rice millers to furnish bank guarantee for 75% of the value of the goods seized from the respective rice mills. In pursuance to the same, the goods were released. Thereafter, the matter was enquired into and the 1st respondent issued proceedings under Section 6-A of the Essential Commodities Act, confiscating the entire stock on the ground that the petitioner has violated condition No. 9 (a) of the A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982, in fact, he had no permission to transport, purchase and seize these goods. Aggrieved by the same, the petitioner

carried the matter in appeal under Section 6-A of Essential Commodities Act before the Principal District Judge, Eluru.

Heard the learned counsel on either side.

There is no necessity to go into all the details. The licence of the petitioner in Form B under A.P. Schedule Commodities Dealers (L&D) Order, 1982 is not in dispute. It is also not in dispute that the Government issued G.O.Ms.No.60, dated 27.7.2000 where under the restriction on the movement of paddy, rice within and out side the State was lifted. Therefore, the petitioner is entitled to purchase various goods particularly paddy, rice and broken rice from a wholesaler or retailer and sell it to another wholesaler or retailer or both.

In view of this, the allegation that the petitioner has violated condition No.9 (a) under Form B licence issued in his favour seems to be not correct. The condition No.9 reads as under:

> "A non-milling wholesaler shall sell Scheduled Commodities to retailers. A rice miller-cum-wholesaler shall ordinarily sell rice to other non-milling wholesaler and to retailers. They may also sell food grains at whole sale rates upto four quintals only directly to any person other than licensed dealer. He shall show in cash memos clearly whether the sales are to wholesaler or retailers or persons other than licensed dealer, produce the same before the licensing authority or any officer authorized by him in this behalf on demand."

From the above, it is seen that under the said licence the petitioner is entitled to purchase the food grains either from a wholesaler or retailer and sell the same to the wholesaler or retailer. There is no restriction under the Form B licence issued in favour of the petitioner for purchase of food grains from a

wholesaler and sell the same to a retailer etc. Therefore, the order dated 27.5.2002 passed by the 1st respondent is arbitrary and illegal. Once this is so, the other charge against the petitioner is that there was some variance in the stocks. According to the learned counsel for the petitioner the stocks were within the permissible limits and this was not taken into consideration by the authorities. Even in the impugned order except saying that there are some variations and the register was not properly maintained, there is no specific allegation and enquiry into the matter.

In view of the above, the impugned order dated 27.5.2002 passed by the 1st respondent, as confirmed by the Principal District Judge, Eluru dated 30.9.2004, is liable to be set aside.

In the result, the writ petition is allowed and the impugned order dated 27.5.2002 passed by the 1st respondent as confirmed by the Principal District Jduge, Eluru dated 30.9.2004 is set aside. No costs.

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13-09-2006

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